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ABSTRACT

This paper argues that the concept of presumption and burden of proof as developed in twentieth century argumentation texts is distinct from the theory developed and perfected by Whately in his "Elements of Rhetoric." The first section of this paper reviews the concepts of presumption and burden of proof as described by Whately, examining how the theory evolved and became more psychologically based. The second section reviews the development of presumption and burden of proof in 26 argumentation texts, showing how presumption is treated with either nonexistent or circumscribed attention to the psychological aspects of presumption. It is concluded from a comparison of Whately's theory to the applications of these concepts in twentieth century argumentation and debate texts that the assumed relationship between the two is generally not valid. (TS)

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The Psychological Burden of Proof:
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The Psychological Burden of Proof:
Or, Deviations from Whately's Theory of Presumption
in Modern Texts on Argumentation and Debate

The argumentative concepts of presumption and burden of proof have long been closely associated with the British rhetorician and divine, Richard Whately. Whately is consistently credited as being the first to apply these legal precepts to the study of argumentation.[1] Whately's influence on the study of presumption has continued to the present day and the conventional view holds that the description and use of presumption and burden of proof in twentieth century argumentation and debate texts is essentially that developed by Whately. L. Dean Fadley argues that, "Modern debate theorists, such as Auer, Baird, Brockriede, Capp, Ehninger, Foster, McBath, McBurney, Mills, O'Neill, Potter, et cetera, expound, for the most part, Whately's views with little or no significant changes."[2] Glen Mills, writing in 1968, makes a similar assessment. "It has been observed that most of the contemporary writing on presumption in argumentation is in the Whately tradition. An examination of eight textbooks copyrighted in the sixties reveals that six present the Whately doctrine: two briefly report it, two quote from it and add modern illustrations, one cites it and adds 'natural' and 'artificial' (assigned) presumptions, and one adapts it to academic debate exclusively."[3]

In opposition to these conclusions, I will argue in this essay that the concept of presumption and burden of proof as developed in twentieth century argumentation texts is, for the most part, quite distinct from the theory as developed and perfected by Whately in his Elements of Rhetoric. Presumption as reflected in contemporary texts is essentially a legal or fixed entity which is assigned to disputants on the basis of objective criteria. In contrast to this notion, the theory of presumption--and its corollary, the burden of proof--as set forth in Elements of Rhetoric, is an essentially audience-oriented concept based on psychological factors of audience background, attitude and perception.

In presenting my thesis, I will first review the concepts of presumption and burden of proof as set forth by Whately. In so doing, I will demonstrate that Whately's theory evolved, becoming ever more psychologically based. Secondly, I will review the development of presumption and burden of proof in twenty-six argumentation texts showing how presumption is treated with either non-existent or circumscribed attention to the psychological aspects of presumption.

Whately on Presumption: The Evolution of a Theory

One cannot really deal with Whately's theory of presumption without observing that the theory evolved considerably over a period of about twenty years. Analysis of this evolution is critical to my thesis, for we will observe that Whately's theory began as a limited, formal or legal discussion and only later became a truly psychological insight. Such indicates a

twenty-year trend of thought in which Whately increasingly came to realize that a formal or legal approach to presumption--outside the courtroom--was limited and, thus, must be reinterpreted within a context of audience psychological orientations. In documenting this trend of treatment, I will consult eight editions of Whately's rhetoric: the original article by Whately on "Rhetoric," published in the Encyclopedia Metropolitana (c. 1818-1819), and the following seven published editions of the Elements of Rhetoric: first (1828), second (1828), third (1830), fourth (1832), fifth (1836), sixth (1841) and the final seventh edition of 1846.[4]

During this period of revision--1818-1846--Whately's Rhetoric grew from an extensive article of approximately 70,000 words to a moderate-sized book of approximately 127,000 words--an increase of 94.08%.[5] It is therefore true to observe, as does W. M. Parrish, that, for Whately, "to revise meant to enlarge."[6] Consistent with this pattern of enlargement, Whately's treatment of presumption and the burden of proof did not appear until the third edition of 1830, at which time it was inserted as a separate section. No allusion to presumption or burden of proof is to be found in either the Metropolitana article, the first edition (1828), or the second edition (1828). Thus, our consideration of Whately's theory will be confined to the third edition (1830) and later revised editions.

In surveying the development of the theory, it will serve our purposes to begin with the final, seventh edition, of 1846. In this edition, Whately's discussion relating to presumption

constituted a separate section and consisted of fifty-three (53) paragraphs. Since Whately's style of revision was to insert whole paragraphs into the original text--without deleting or significantly altering existent material--we may trace the process by which Whately's discussion reached its finished form on a paragraph by paragraph basis.

Whately's third and fourth edition treatments of presumption were identical and amounted to only eighteen (18) paragraphs--less than half of the final version. Numbered on the basis of the seventh edition, Whately's third and fourth edition discussions of presumption included only paragraphs 1-16, 34 and 53.[7] Clearly, in these early versions (1830 and 1832), presumption was introduced as a fixed or legal entity--something to be decided in the mind of the arguer and communicated to the "hearer." (paragraph 1) Whately, in paragraph 2, defined presumption as, "a pre-occupation of the ground," indicating that something should be accepted, "till some sufficient reason is adduced against it. . . ." The burden of proof was, in this scheme, a corollary principle and lay "on the side of him who would dispute it [the concept favored by presumption]."

It is apparent that this early definition of presumption and burden of proof was legal in nature--i.e., that presumption, and its corollary, could be assigned to various concepts in or parties to a dispute. This inference about the legal orientation of Whately's early treatment is reinforced by his use of legal terminology (the onus probandi) and legal analogies. "Thus," writes Whately, "it is a well-known principle of the law, that every man (including a prisoner brought up for trial) is to be

presumed innocent till his guilt is established."[8] (paragraph 3) The legal orientation of Whately's early theory is significant, for presumption--as a legal phenomenon--is something which can be objectively assigned. The advocate's task becomes twofold: "[1] to perceive and, [2] to shew, on which side the Presumption lies. . . ." (paragraph 5) In this view the audience is passive and merely receives the decision of the advocate(s).

Having defined presumption and sketched out its operation, Whately provides several "cases in which it is important, though very easy, to point out where the Presumption lies." (paragraph 7) These are generally three: there exists a presumption in favor of (1) an existing institution (paragraph 8), (2) an accused person or book (paragraph 9) and (3) prevailing opinion (paragraph 10). As a result, a burden of proof falls on those who (1) propose alterations in existing institutions, (2) make accusations in court and (3) maintain an opinion contrary to the prevailing one.[9]

A final aspect of Whately's original treatment of presumption was his contention that, "a Presumption may be rebutted by an opposite Presumption, so as to shift the Burden of proof to the other side." (paragraph 34) He provided an example of how this might operate, arguing that, although one might assert that there is a presumption against every change, a counter presumption might be maintained to the effect that, "every Restriction is in itself an evil. . . ." Therefore, it might be contended that the presumption lay on those who opposed existing restrictions.[10]

Although the above review documents the prevalence of a fixed or legal notion of presumption, we may infer--even in this

early treatment--germinal aspects of the later psychologically-oriented theory. First, it is important to observe that Richard Whately considered it possible for one advocate to supply counter-presumptions challenging the assignment of presumption by a second arguer. Although the role of the audience in this scenario is unmentioned, the possibility of varying interpretations of presumption by communicators certainly implied that at some point the audience must choose between the two interpretations. This--taken together with Whately's statement that a presumption favors existing opinions--suggests that implicit in Whately's early treatment of presumption is the idea that the audience must be the final arbiter of presumption in an argumentative situation. The psychological principles by which the audience would make its choice were left for later editions.

The fifth edition of Whately's Elements of Rhetoric appeared in 1836, containing an additional six paragraphs on presumption (paragraphs 17 and 18, 49-52). The areas of addition--there were no deletions--were twofold: (1) further examples of the assignment and operation of presumption and burden of proof in religious disputes (paragraphs 17 and 18), and (2) further development of how presumptions were rebutted by counter-presumptions (paragraphs 49-52).[11] A significant innovation in the first category was Whately's observation that, "in any one question the Presumption will often be found to lie on different sides, in respect of different parties." (paragraph 18) In this view, the religious group membership of the hearers determined the assignment of presumption, for a person would not change his

religious affiliation unless good reasons were provided to justify the change--that is, the presumption favoring his church were overcome by a burden of proof. This addition is significant because--for the first time--audience orientation is seen to be a major factor in the determination of the locus of presumption.

The second area of innovation--the concept of novelty as an explanation of the process by which presumptions were rebutted--further elaborated Whately's increasing conviction that audience orientation determined the placement of presumption. In this new section on novelty, Whately extended his fourth edition analysis of how presumptions were rebutted. He cautioned against the assumption that, "there is necessarily an advantage in having the [objectively-assigned] presumption on one side, and the [assigned] burden of proof on the adversary's." (paragraph 49) Whately argued that assigned presumption was not necessarily an advantage because it might be rebutted by a psychological counter-presumption based on audience-member orientation. Specifically, he claimed, that although presumption opposed the arguments against the divine origin of the church, these arguments were often favored by an audience tendency to favorably receive new and novel information. Writing of the possible objections to divine revelation, Whately contended that these objections caused the Christian to seek "answers to all these objections. . . ." and that the Christian "fancies that unless they can all be satisfactorily solved, he ought not to receive the [Christian] religion." (paragraph 49) In short, the assigned presumption (the divine origin of the church is presumed

until disproven) is seen to be potentially rebutted by a psychological presumption (Christianity should not be considered divinely inspired unless all objections to revelation can be answered). Still differentiating between assigned and psychological presumption Whately, nevertheless, owed that, although formally invalid, the psychological counter-presumption of novelty was an ever-present "temptation." (paragraphs 50-52)

We may summarize the two significant fifth edition additions to Whately's theory of presumption as follows: (1) the perception of presumption may vary according to audience membership, and (2) the "legal" or logically-objective assignment of presumption may be overturned by a psychological presumption attending to things novel. Thus, by 1836 Whately no longer saw presumption as a totally fixable quality. In actual operation the impact of presumption was determined by sociological (group membership) and psychological (novelty) factors independent of any logical placement of the burden of proof.

Although no significant innovations to the theory of presumption were registered in the sixth edition (1841) of the Elements,[12] important additions were made in the final, seventh edition of the treatise (1846).[13] The psychological basis of presumption was brought to fruition. The final alterations may be treated in two categories: (1) a further development of how counter-presumptions rebutted other presumptions (paragraphs 35, and 42-48), and (2) the concept of "deference" as a psychological explanation of the audience's perception of presumption. (paragraphs 19-33) Since the additions relative to counter-presumption

do not represent a departure from the earlier discussion in editions four, five and six,[14] we may move, immediately, to a consideration of the crucial concept of "deference." Deference is appended to the treatment of presumption as a function of group membership--introduced in the fifth edition. Deference is yet another audience-oriented approach to presumption which assumes that presumption cannot be assigned by rules.

Whately defines deference to be an "habitual presumption" in favor of the opinions of a particular "person, Body or book."[15] (paragraph 19) Deference was seen to be the recognition of the authority conferred on an object by a presumption. Basic to Whately's treatment of deference, was the notion that it resided "in the mind" of the hearer and that hearers could even be consciously "unaware" of the deference which they accorded to favored objects. (paragraph 21) Based as it was on the individual's conscious or unconscious perception, deference was seen to operate according to the principles of faculty psychology. That is, deference was described as being addressed to the faculty of "feelings," whereas mere "admiration" appealed--albeit erroneously--to the understanding. (paragraphs 23-24) Further, Whately observed that persons might deceive themselves regarding deference--that is, their faculty of understanding did not recognize it whereas their feelings did. (paragraph 28) Finally, Whately devoted attention to several factors which caused deference to be variously accorded or not accorded to specific objects. These were: (1) moods of the hearer (paragraph 26), (2) demeanor of the advocate (paragraph 25), (3) credibility of the advocate

as a source of information (paragraph 29), (4) the specific subject matter of the dispute (paragraph 27) and (5) the preference for a collective over individual judgment. (paragraphs 30-33) All these factors relied on audience members to determine the locus of presumption.

Our review of the evolution of presumption allows us to make two overall judgments about the nature of Whately's theory of presumption:

1. Although the early fourth edition treated presumption as an essentially fixable quality, communicated to a passive audience, later editions described presumption as a perception by audience members which was determined by sociological (group membership) and psychological considerations.

2. The basic operation of presumption was described as psychological because the "logical" or assigned presumption was dependent on perception governed by sociological and psychological characteristics of the audience.

Presumption and Burden of Proof in Twentieth Century Argumentation Texts

Having examined the evolution of Whately's theory into an essentially psychological treatment of presumption we may now consider the extent to which this theory is reflected in modern argumentation and debate textbooks. Fadley and Mills have argued that modern-day descriptions are essentially unaltered restatements or applications of Whately. My review of twenty-six texts[16] convinces me otherwise. Specifically, I find that the audience-centered orientation of Whately's theory receives negligible treatment in contemporary discussions. These almost uniformly rely on the legal or fixed approach to presumption which characterized only Whately's very early theory.

Although the treatment of presumption and burden of proof varies in length and specificity, the basic definition of presumption and burden of proof remains remarkably consistent throughout the twenty-six references examined. The general analysis holds, that in the scrutiny and construction of propositions, disputants challenging the established order--the affirmative--incur a burden to prove their case, whereas those defending the status quo--the negative--benefit from the presumption that the present system is free from serious error. Consider a few representative selections:

> The burden of proof is with him who holds the affirmative. . . .[17]

> The team that advocates a change in the present policy must assume the burden of proof. . . .[18]

> Since the affirmative is contending that its own policy is better than the present one, it must prove it. . . In this regard, most writers on debate speak of 'a presumption in favor of the negative'. . . .[19]

> Because the presumption is for the present system and against the proposition, the affirmative side must assume the burden of proof.[20]

Many writers carry this definition one step further and emphasize that the debate topic must be so worded as to place the presumption and burden of proof correctly, according to the rule above.

> The proposition should be so stated that the one who upholds it has the burden of proof.[21]

> Next, the phrasing [of the proposition] should assign to the affirmative the burden of proof.[22]

> It [the proposition] places the presumption and burden of proof correctly.[23]

> If the proposition is correctly stated, the burden is on the affirmative.[24]

This interpretation--that the proposition correctly places the presumption and burden of proof on the negative and affirmative

sides, respectively--is consistent with the approach of seventeen of the other eighteen texts not cited specifically.[25] In addition to considering presumption and burden of proof as a device for constructing and wording debate propositions,[26] more recent textbooks tend to treat two additional functions of these concepts: (1) their use in the analysis and construction of affirmative cases in response to issues, and (2) their use in determining the outcome (judge's decision) in debates.

Sixteen of the twenty-six texts reviewed give significant attention to the role of presumption and the proof burden in the analysis and construction of cases in response to issues.[27] The common thesis is this: the burden of proof requires the affirmative to establish a preponderance of proof in each area of issue; the affirmative accomplishes this, initially, via a prima facie case.[28] Further, ten of the twenty-six specifically consider the use of presumption and burden of proof in the determination of the winner/loser of debates.[29] While no unanimity of opinion exists, the standard interpretation holds that the judge should award the decision to the affirmative team if that team upholds the burden of proof on all issues; if not, the negative should receive the decision.[30]

The commonly-held theory of presumption and burden of proof in twentieth century texts emerges, therefore, as follows:

1. Those who challenge an existing order (affirmative) incur a burden of proof because they seek to overthrow an existing presumption that the status quo is the preferable mode of existence.

2. In meeting this burden of proof, the affirmative is required to establish a prima facie case which must amass a preponderance of proof on all crucial issues.

3. The affirmative successfully undertakes its duty to supplant negative presumption--and is thereby awarded the decision--when a preponderance of proof has been established on all crucial issues. Failing this, the negative, as defenders of the present system, are awarded the decision.

Whately's Theory in Twentieth Century Texts

It should be apparent that the modern textbook treatment of presumption and burden of proof bears little relationship to the fully-developed theory of presumption set forth in the seventh edition of Richard Whately's Elements of Rhetoric. The modern debate application assumes that (1) presumption and burden of proof can and should be legally affixed to sides in a non-legal dispute, and (2) that the outcome of the dispute should be determined by this independent assignment. I have already argued that such a fixed notion of presumption departs from Whately's theory as it evolved in later editions. Whately came to understand that the sociological and psychological assignment of presumption by an audience underlay the process of argumentation--even though Whately retained his earlier purist's preference for the legal approach. In sum, whereas Whately's presumption is audience-determined, the textbook presumption is fixed according to rules; whereas Whately's audience determined the effect of presumption through novelty and deference, textbooks prefer an orderly application of presumption by the assigned debate judge.

In addition to this general argument, I offer four additional supports for my thesis that the theory of presumption reflected in argumentation and debate texts bears only a superficial resemblance to that advanced by Bishop Whately.

1. Whately is cited in only six of the twenty-six argumentation and debate texts as the author of the argumentative use of presumption and burden of proof.[31]

2. The aforesaid six references to Whately are uniformly taken from Whately's early discussion of presumption and burden of proof (paragraphs 1-16 and 34). Thus, none of the later psychological refinements receive any explicit treatment.[32]

3. Of the twenty-one texts which clearly identify an origin of the theory of presumption and burden of proof, only six refer to Whately as the source, whereas fifteen base the theory of presumption and burden of proof on other sources--without citing or alluding to Whately. Seven of the fifteen base the theory on the legal principle: "he who asserts must prove;"[33] eight of the fifteen base the theory of presumption and burden of proof on an analogy drawn between argumentation and practice in the law courts.[34]

4. Whereas Whately asserts that the burden of proof can be transferred (paragraph 34), recent text writers tend to argue that the burden of proof does not and cannot shift--that it remains with the affirmative throughout the debate.[35] A distinction is often drawn between the burden of proof and the burden of going forward with the debate (burden of rebuttal). The latter is usually said to apply equally to both the affirmative and negative sides of a question.[36]

It would be inaccurate to allege that twentieth century argumentation textbooks have totally ignored the role of the audience in determining presumption. Actually, thirteen of the twenty-six texts surveyed included a discussion of audience majority opinion as it related to presumption. Thus, several of the texts extended the rules governing assignment of presumption to include consideration of audience opinion. In this view, the burden of proof was placed on the side which either favored change or opposed majority opinion. Thus, in his section on wording the subject for debate, A. Craig Baird suggested that, "The proposition should be so phrased that those who introduce the resolution should assume the burden of proof." However, he added that, "To give to the

affirmative the responsibility of proving a case, the statement should be framed so that, (1) the affirmative advocates a policy or contention strongly opposed to public opinion, or so that (2) a change from existing affairs is advocated, as in the usual question of policy." Baird believed that "Usually the advocacy of a change will mean also the advocacy of a course of action contrary to popular approval." However, in cases in which these two rules were in conflict--or their relationship could not be determined--Baird suggested that the "conventional suggestion" be followed--"wording the proposition so that a change from existing affairs is proposed."[37]

Baird's position--that the burden of proof should fall either on the side advocating change or the side opposing common opinion--was shared by nine of the other textbook writers surveyed.[38]

The foregoing review indicates that the audience is considered as a presumptive factor in thirteen (half) of the twenty-six works consulted. However, the significance of this concession to the psychological nature of presumption can be easily overrated. First, presumption is uniformly treated as something to be assigned via previously established rules. Further, these writers seem to consider audience opinion as a secondary factor to be considered in subordination to the usually fixed approach that the burden of proof should be assigned to the advocate of change.[39] Also, three of the thirteen--Baird, Mills and Nichols--explicitly qualify their acceptance of the validity of audience-determined presumption, suggesting that the affirmative should be <u>assigned</u> the burden of proof even though the audience favors change.[40] Finally,

the most telling argument that the textbook writers really do not share Whately's emphasis on the audience is provided by this statistic: of those thirteen texts citing the audience opinion as a presumptive factor, nine were published in the 1912-1944 period and only four appeared in the years 1950-1972. Converting these numbers into percentage figures, 75% (nine out of twelve) of the argumentation texts surveyed for the period 1912-1944 considered audience opinion as an element in determining the assignment of presumption;[41] only 28% (four out of fourteen) of surveyed texts with copyright dates between 1950 and 1972 treated the audience as such.[42] In other words, whereas Whately's later editions became increasingly psychologically oriented, modern argumentation texts display an opposite trend. They exhibit less attention to the audience and, therefore, give proportionally more weight to the assignment of presumption as solely a factor of argumentative position in a dispute.

The foregoing comparison of Whately's theory of presumption and burden of proof to the applications of these concepts in twentieth century argumentation and debate texts causes me to conclude that the assumed relationship between the two is generally not valid. Whately's theory evolved from a legal or fixed one into a discussion based on audience sociological and psychological orientations. In contrast, the treatment in the textbooks is rooted in a preference (which seems to be increasing) for a legal or rule-oriented assignment of presumption and burden of proof to advocates in a dispute. Further, legal analogies serve as the stated origin of presumption in many more cases than does Whately's

Elements. Finally, references to Whately are uniformly taken from his early discussion and omit all of his later psychological refinements.

[1]See Glen Mills, Reason in Controversy: On General Argumentation (2nd. ed.; Boston: Allyn and Bacon, 1968), p. 50, Douglas Ehninger, "Campbell, Blair and Whately: Old Friends in a New Light," Western Speech, XIX, No. 4 (October, 1955), 268, Gary Cronkhite, "The Locus of Presumption," Central States Speech Journal, XVII, No. 4 (November, 1966), 270, L. Dean Fadely, "The Validity of the Comparative Advantages Case," Journal of the American Forensic Association, IV, No. 1 (Winter, 1967), 29, Douglas Ehninger and Wayne Brockriede, Decision by Debate (New York: Dodd, Mead and Co., 1963), p. 97, Orville L. Pence, "The Concept and Function of Logical Proof in the Rhetorical System of Richard Whately," Speech Monographs, XX, No. 1 (March, 1953), 31 and 38 and Bernard L. Brock, et. al., Public Policy Decision-Making: Systems Analysis and Comparative Advantages Debate (New York: Harper and Row, 1973), p. 147.

[2]Fadley, 30.

[3]Mills, p. 52.

[4]See Richard Whately, Elements of Rhetoric (Oxford: John Murray and John Parker, 1828), and Richard Whately, Elements of Rhetoric (2nd ed.; Oxford: John Murray and John Parker, 1828). We should observe that the second edition appears to be merely an unaltered reprint of the first edition. Whately's work appears to have been substantively revised only in the third, fifth, sixth and seventh editions. Although Parrish was unable to examine a copy of the first edition, his analysis of Whately's revisions remains authoritative. See Wayland M. Parrish,

"Whately and His Rhetoric," Quarterly Journal of Speech, XV, No. 1 (February, 1929), 58-79.

[5]These calculations are based on the assumption that a full page of the Metropolitana article on "Rhetoric" amounted to sixty-seven lines at 18.5 words per line, or 1240 words per page; a full page of the seventh edition of the Elements of Rhetoric is calculated to be 36 lines at 10 words per line. Ehninger arrives at comparable figures using estimates based on number of pages. See Douglas Ehninger, "Editor's Introduction," in Douglas Ehninger (ed.) Elements of Rhetoric (Carbondale: Southern Illincis University Press, 1963), p. xvii.

[6]See Parrish, 72.

[7]The following quoted references are to the third edition, until noted otherwise. See Richard Whately, Elements of Rhetoric (3rd ed.; Oxford: W. Baxter for John Murray and J. Parker, 1830), pp. 97-105. Note that paragraph numbers are indicated in parentheses after each reference. Paragraphs are numbered according to the final treatment of presumption and burden of proof in the seventh edition of Elements.

[8]Whately maintains other legal examples of the assignment of presumption in paragraphs 4, 6 and 9. See Whately, pp. 98-101.

[9]Whately amplifies the discussion of cases number one and three in his analysis of presumption as it applies to religious disputes. He provides three examples of the utility of assigning presumption in such disputes. In his view there existed a

presumption: (1) against the Gospel initially, and in favor of it now (paragraphs 12-14), (2) against the authors of the reformation--in so far as they challenged existing practices (paragraph 15), and (3) in favor of those who defended the maintenance of an episcopal organization of the established church (paragraph 16). Consequently, in Bishop Whately's view, a burden of proof lay on the then-modern day attackers of the Gospel, those skeptical of the divine origin of the church and those who suggested modifications in existing church institutions.

[10]Whately used this argument in his speech on the Jewish Disabilities Bill. See Anderson and Hayes, 133-36.

[11]See Richard Whately, Elements of Rhetoric (5th ed.; London: B. Fellows, 1836), pp. 112-13 and 114-18. Whately's additional treatment of presumption in religious disputes included his conclusion that a presumption favored all commands of scripture and that a burden of proof was incumbent on those who alleged tradition to support articles of faith not found in scripture. (paragraph 17)

[12]Six new paragraphs were added in the sixth edition--numbers 36-41. These paragraphs provided (1) a second example how presumption may be rebutted and (2) an essentially irrelevant discussion of the reemergence of the study of logic. See Richard Whately, Elements of Rhetoric (6th ed.; London: B. Fellows, 1841), pp. 129-32.

[13]See Richard Whately, Elements of Rhetoric (7th ed.; London: John W. Parker, 1846). A facsimilie reproduction of this edition is available from the Southern Illinois University Press.

[14]The additions took the form of (1) an extended analysis of an earlier second example of counter-presumption introduced in the sixth edition, (paragraphs 42-45) and (2) a new third example of counter-presumption (paragraph 35) and (3) a new fourth example of counter-presumption (paragraphs 46-48).

[15]All subsequent quotes from the Elements will be taken from the seventh edition. See Whately, pp. 112-32.

[16]A total of twenty-six textbooks were reviewed, and will be cited specifically in succeeding footnotes. The texts cover the period 1912-1972. Twelve were copyrighted in the 1912-1944 period; 14 in the 1951-1972 period. This roster of twenty-six texts encompasses five of the eight books reviewed by Mills and eight of the eleven theorists cited by Fadley. See footnotes number two and three.

[17]Harry F. Covington, The Fundamentals of Debate (New York: Charles Scribner's Sons, 1918), p. 126.

[18]G. E. Densmore, Contest Debating (Ann Arbor, Michigan: George Wahr Publisher, 1929), p. 22.

[19]Arthur N. Kruger, Modern Debate: Its Logic and Strategy (New York: McGraw-Hill Book Co., 1960), p. 40.

[20]Robert C. Dick, Argumentation and Rational Debating (Dubuque: William C. Brown Co., Publishers, 1972), p. 7.

[21]Charles A. Fritz, The Method of Argument (New York: Prentice-Hall Inc., 1931), p. 42.

[22]Alan Nichols, Discussion and Debate (New York: Harcourt, Brace and Co., 1941), p. 259.

[23]Austin J. Freeley, Argumentation and Debate: Rational Decision Making (San Francisco: Wadsworth Publishing Co., 1961), p. 16.

[24]Wayne N. Thompson, Modern Argumentation and Debate: Principles and Practices (New York: Harper and Row, 1971), p. 10.

[25]See A. Craig Baird, Argumentation, Discussion and Debate (New York: McGraw-Hill Book Co., 1950), p. 26, William A. Behl, Discussion and Debate: An Introduction to Argument (New York: The Ronald Press, 1953), p. 26, Ehninger and Brockriede, p. 87, Abne M. Eisenberg and Joseph A. Ilardo, Argument: An Alternative to Violence (Englewood Cliffs, N.J.: Prentice-Hall, 1972), pp. 24-25, Henry L. Ewbank and J. Jeffery Auer, Discussion and Debate: Tools of a Democracy (New York: F. S. Crofts and Co., 1941), p. 90, William T. Foster, Argumentation and Debating (2nd revised ed.; Boston: Houghton Mifflin Co., 1932), pp. 8 and 247, J. H. Gardiner, The Making of Arguments (Boston: Ginn and Co., 1912), p. 45, Harold F. Graves and Carl B. Spotts, The Art of Argument (New York: Prentice-Hall, 1936), pp. 22-23, Donald Hayworth and Robert B. Capel, Oral Argument (New York: Harper

and Brothers, 1934), p. 38, Donald W. Klopf and James C. McCroskey, The Elements of Debate (New York: Arco Pub. Co., 1969), pp. 17, 24 and 65, James H. McBurney, James M. O'Neill and Glen E. Mills, Argumentation and Debate: Techniques for a Free Society (New York: The MacMillan Co., 1951), pp. 21-22, Mills, p. 85, James M. O'Neill and James H. McBurney, The Working Principles of Argument (New York: The MacMillan Co., 1932), pp. 16 and 24, Russell R. Windes and Arthur Hastings, Argumentation and Advocacy (New York: Random House, 1965), pp. 74-75, Roy V. Wood, Strategic Debate (2nd ed.; Skokie, Ill.: National Textbook Co., 1972), pp. 15-17, George R. Collins and John S. Morris, Persuasion and Debate (New York: Harper and Brothers, 1927), pp. 171-72 and Lionel Crocker, Argumentation and Debate (New York: American Book Co., 1944), pp. 22-23.

Musgrave differs from this analysis, holding that the burden of proof applies equally to affirmative and negative since both must prove their respective contentions. See George M. Musgrave, Competitive Debate: Rules and Techniques (3rd. ed.; New York: The H. W. Wilson Co., 1957), pp. 18-19.

[26]It should be noted that Ehninger and Brockriede, pp. 83-84, differentiate between "natural" and "artificial" presumption. O'Neill and McBurney, pp. 16-24, distinguish between the "actual" and "nominal" affirmative.

[27]Of these sixteen, ten were published in the 1951-1972 period, while only six of the sixteen were published in the earlier 1912-1944 years. Converting these figures to percentages,

71% of the later-surveyed texts (10 of 14) treated presumption and burden of proof as useful in analysis of issues and construction of cases; 50% of the 1912-1944 texts (6 of 12) developed this theme.

[28]See Behl, p. 248, Crocker, p. 47, Densmore, pp. 27, 30 and 35, Dick, p. 8, Ehninger and Brockriede, pp. 88-89, Eisenberg and Ilardo, p. 31, Foster, p. 17, Freeley, pp. 18 and 32, Graves and Spotts, p. 66, Hayworth and Capel, p. 38, Klopf and McCroskey, p. 24, McBurney, O'Neill and Mills, p. 41, O'Neill and McBurney, pp. 56 and 86, Thompson, pp. 53-55, Windes and Hasting, pp. 74 and 79 and Wood, pp. 16-17.

[29]Review of the twenty-six texts indicates that this interpretation receives specific attention in more recent texts. Of the ten texts expressing this position, nine were published during the 1951-1972 period and only one during the 1912-1944 period. Converting these figures to percentages, 8% of the earlier texts (1 of 12) emphasized presumption and burden of proof as a factor in decisions; whereas, 64% of the later-period texts (9 out of 14) did so. See footnote, below, for specific texts cited.

[30]See Dick, p. 18, Ehninger and Brockriede, pp. 82-83 and 339, Eisenberg and Ilardo, p. 31, Freeley, p. 17, Graves and Spotts, p. 66, Kruger, p. 55, Mills, p. 307, Wood, p. 164. Note, however, that two authors accept this position but add a caveat that the affirmative should not necessarily be expected to carry every issue. See Kruger, p. 365 and Thompson, p. 53. Three

authors emphasize that, because of the affirmative burden of proof and negative presumption, there can be no "tie" in a debate. See Kruger, p. 127, Freeley, p. 17 and Musgrave, p. 105. Finally, the McBurney, O'Neill and Mills Text, p. 42, favors "skills" judging in preference to case or "issues" judging.

[31]See Dick, p. 6, Ehninger and Brockriede, pp. 84 and 97, Eisenberg and Ilardo, p. 26, McBurney, O'Neill and Mills, p. 13, Mills, pp. 50-53 and Thompson, p. 45.

[32]Dick quotes from paragraph 2; Ehninger and Brockriede seem to refer only to paragraphs 2 and 3; Eisenberg and Ilardo refer directly to paragraph 8; Mills treats paragraphs 1-16 and 34 but apparently used an American version of the Elements based on the third or fourth English edition; McBurney, O'Neill and Mills cite paragraphs 1-7 and, finally, Thompson, also, refers only to the early Whately treatment.

For a good discussion of the later refinements to Whately's theory of presumption and burden of proof--and the complications they pose--See Cronkhite, 270-76. See also P. X. Knoll, "Presumption in the Introduction to the Argumentative Speech," Quarterly Journal of Speech, XVIII, No. 4 (February, 1932), 637-42.

[33]See Behl, p. 26, Collins and Morris, p. 171, Covington, p. 126, Ewbank and Auer, p. 90, Foster, pp. 8-9, Gardiner, p. 43, and Musgrave, pp. 18-19.

[34]See Graves and Spotts, pp. 22-23, Fritz, p. 42, Klopf and McCroskey, p. 17, Hayworth and Capel, p. 37, Windes and Hastings,

p. 74, Wood, p. 15, Nichols, p. 259 and Freeley, p. 17. For a description of the use of presumption and burden of proof in law see Henry C. Black, Black's Law Dictionary (4th ed. revised by Publisher's editorial staff; St. Paul: West Pub., 1968), pp. 246 and 1349-51 and Max Radin, Radin Law Dictionary (2nd ed.; Dobbs Ferry, N.Y.: Oceana Pub., 1970).

[35]See Freeley, p. 18, Windes and Hastings, p. 77, Wood, p. 17, Thompson, p. 11, O'Neill and McBurney, pp. 15-16, McBurney, O'Neill and Mills, pp. 41 and 162, Ehninger and Brockriede, p. 87, Dick, pp. 7-8, Mills, p. 55, Fritz, p. 43.

[36]See Freeley, p. 18, Graves and Spotts, p. 24, Thompson, p. 11, Wood, p. 17, O'Neill and McBurney, p. 87, McBurney, O'Neill and Mills, pp. 162-63, Ehninger and Brockriede, pp. 85-86, Dick, pp. 7-8, Mills, p. 55 and Fritz, pp. 43-44.

[37]Baird, p. 26.

[38]See Crocker, pp. 22-24, Collins and Morris, p. 171, Graves and Spotts, p. 23, Fritz, p. 42, Mills, p. 85, Thompson, p. 23, Nichols, p. 120. Windes and Hastings argue, pp. 75-76, that presumption is "associated with attitudes represented by the majority public opinion. . . ." Ewbank and Auer argue, p. 90, that when audience opinion favors change the proposition should be reworded to place the burden of proof on those who favor the status quo.

[39]In particular three writers emphasize the importance of audience orientation as a determiner of presumption and burden

of proof. J. H. Gardiner emphasized that, "Always, one must remember that the burden of proof depends on the prepossessions of the audience. . . ." See Gardiner, p. 45. Hayworth and Capel argued that, "In fact, anything that affects the beliefs, prejudices, or fundamental desires of an audience may affect the burden of proof." See Hayworth and Capel, p. 41. O'Neill and McBurney similarly note that, "It is also important that the arguer ascertain the acceptance attitude of the audience toward the proposition." See O'Neill and McBurney, p. 76. It should be noted that these three texts are the only ones of the twenty-six which accord a priority role to audience opinion in the determination of presumption.

[40]See Baird, p. 26, Mills, p. 85 and Nichols, p. 120. Mills, pp. 52-53 argues that audience opinion is "unreliable" and should not, therefore, be used.

[41]These nine texts are: Crocker, Collins and Morris, Graves and Spotts, Fritz, Nichols, Ewbank and Auer, Gardiner, Hayworth and Capel, O'Neill and McBurney.

[42]These four texts are: Baird, Mills, Thompson and Windes and Hastings.